IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 346 of 2007(C)

MP.5098/2006 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER/CLAIMANT:

SANTHOSHKUMAR, PALLIPARAMBIL HOUSE,
CHERTHALA, REPRESENTED BY THE MUKTHYADAR
PRASAD, PERINGATTU HOUSE, KAMBIVELIKKAKATH.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS/ COMPLAINANT/RIVAL CLAIMANTS:

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1. SAHADEVAN, S/O.SIVASANKARAN NAIR,
THATHAPPILLY VEEDU, ERAMALLOOR KARA,
ERAMALLOOR VILLAGE, KOLTHAMANGALAM TALUK.

2. MANAGESR, SREERAM TRANSPORT FINANCE
COMPANY, CHITTOOR ROAD, ERNAKULAM.

3. SUB INSPECTOR OF POLICE,
KURUPPAMPADY.

4. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/02/2007, ALONG WITH CRMC NO.437 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.346 and 437 of 2007

Dated this the 21st day of February, 2007

ORDER

These petitions are filed by the petitioners, who claim to be aggrieved by the common order dated 08.02.2007 produced as Annexure-A1 in Crl.M.C 346 of 2007. The petitioner in 437 of 2007, (I shall hereinafter referred to him as the `R.C owner'), is the person in whose name, is the vehicle stands registered. He had entered into an agreement with M/s.Shri Ram Transport Finance Co. Ltd. (hereinafter referred to as the `financier'). Under the said agreement, an amount of about Rs.1,75,000/- is due as on this date, submits the financier.

2. While that agreement was in force, the R.C owner entered into an agreement with one Ramesh for transfer of the vehicle. Possession of the vehicle was handed over to Ramesh subject to the only liability that the amount due to the financier shall be paid by the said Ramesh. It is submitted that the said Ramesh had later transferred the vehicle to one Shaji and from the said Shaji, the petitioner in Crl.M.C. No.346 of 2007, one Santhoshkumar had acquired possession of the vehicle. He is referred to hereinafter as the agreement owner.

3. There allegedly was default in payment of the amounts to the financier. The financier made a demand on the R.C owner. The

R.C owner then filed a private complaint before the learned Magistrate. In that the agreement owner was not arrayed as an accused. That complaint was referred to the police under Section 156 (3) Cr.P.C. In the course of investigation, the vehicle was seized and produced before the learned Magistrate. The investigator arrayed the agreement owner also as additional 2nd accused in the crime.

4. All the 3 - R.C owner, agreement owner and the financier applied for release of the vehicle. The learned Magistrate considered the claims of all the 3 and came to the conclusion that the financier is the best person entitled to possession of the vehicle. The right of the R.C owner to pay the amount due to the financier under the agreement between them and to claim back the vehicle was reserved.

5. It is aggrieved by the said order that the R.C owner and the agreement owner have now come before this Court. The agreement owner complains to the Court that the filing of the private complaint, registration of the crime, seizure of the vehicle etc. are all only a ploy entered into between the R.C owner and the financier to deprive him of lawful possession of the vehicle. He contends that there is no worthwhile allegation of any crime raised by the R.C owner in the complaint. Only to somehow dispossess the agreement owner, the R.C owner in collusion with the financier has resorted to such course of filing the complaint. The agreement owner submits

that he is prepared to pay all amounts legally payable to the financier. In fact, he has already initiated proceedings before the civil court for an order restraining the financier and the R.C owner from dispossessing him and to settle the accounts and declare the amount actually payable under the agreement between the R.C owner and the financier to the financier. The counsel for the agreement owner submits that the agreement owner is prepared to take possession of the vehicle subject to any reasonable conditions and subject to the decision of the civil court. He may not be dispossessed. He is admittedly the person who was having possession of the vehicle and from whose possession, the vehicle was seized by the police. In these circumstances, to deprive him of possession by this ingenious method is unjustified, he contends.

6. The R.C owner supports the impugned order and only submits that if the vehicle were to be handed over to the agreement owner, that may be only subject to appropriate terms, which would ensure his interest. Transfer of the vehicle to the name of the agreement owner may be insisted, submits the learned counsel for the R.C owner.

7. So far as the financier is concerned, he contends that his interest is limited to secure the amounts legally payable under the agreement with the R.C owner. In as much as that amount is not

being paid, he may be permitted to retain possession of the vehicle in exercise of his right to repossess the vehicle for default in payment of the amount due.

8. I have considered all the relevant inputs. There is a serious dispute as to what amount is liable to be paid to the financier. The civil court is already seized of the matter, it is submitted. The agreement owner undertakes to pay whatever amounts is found liable in accordance with law to the financier. The civil court is seized of the matter also. I am, in these circumstances, satisfied that the agreement owner is the person most entitled to keep possession of the vehicle till the disposal of the proceedings. The only right which the R.C owner or the financier can claim is the payment of the amounts legally due under the agreement. Subject to such necessary safeguards, the agreement owner can be permitted to keep possession of the vehicle. I find merit in the submission that the very criminal complaint is ingenious to ensure that the agreement owner is deprived of possession of the vehicle. Appropriate safeguards can be insisted for the amount allegedly due to the financier and also to ensure that the vehicle is not destroyed or dissipated pending disposal of the proceedings.

9. Crl.M.C.No.346 of 2007 is, in these circumstances, allowed and Crl.M.C.No.437 of 2007 is dismissed. The impugned

order is set aside. It is directed that the vehicle shall be released to the agreement owner on the following terms and conditions.

i) The agreement owner shall execute a bond for Rs.2 lakhs with two solvent sureties, each for the like sum to the satisfaction of the learned Magistrate;

ii) He shall undertake that he shall not take the vehicle out of the State of Kerala and shall not dismantle or demolish the vehicle without the prior permission of the court;

iii) He shall undertake to pay such amount as is found to be due legally to the financier in accordance with law;

10. It is further clarified that all these directions shall be subject to the decisions/directions of the civil court from time to time. This order shall be without prejudice to the rights of the financier to move the civil court for recovery of amounts, if any, due to him and to attach the vehicle in enforcement of his claim.

(R.BASANT, JUDGE)

rtr/-